

201607657
Eddy Gutierrez

A man staying in a homeless shelter in Washington Heights believed that another resident had stolen money from him and called the police. When the officers arrived, they refused to take a complaint for the alleged theft, stating that the allegations were within the jurisdiction of the Department of Homeless Services. The man alleged that the officers were discourteous to him during the encounter. When interviewed, the officers alleged that the man had been intoxicated, and while they confirmed they would not take his criminal complaint, they denied being discourteous.

At the outset of his CCRB interview, PO Gutierrez read an entry from his memo book into the record. When asked when he had written the memo book entry, he stated that he had written it on the date the call had come in. The CCRB had previously requested and received a copy of PO Gutierrez's memo book from the date of the incident, which showed a substantially less detailed entry. When confronted with the prior entry, PO Gutierrez admitted that his previous statement about the memo book entry was not true and that he had revised the memo book entry just a few days before his CCRB interview, when he knew he would be asked to come in. The CCRB closed the allegations of discourtesy as unsubstantiated, and found that PO Gutierrez had made a materially false statement when he lied about the date he made the memo book entry.

The NYPD did not discipline PO Gutierrez in any way for the false statement.

Interview Details

Summary of CCRB Interview with [REDACTED]

September 20, 2016
11:46 a.m. – 12:28 p.m.

[REDACTED] is a black male who stands 5'2" tall and weighs 195 pounds. He has black hair and brown eyes. At the time of the incident he was [REDACTED] years old and unemployed.

CCRB Interview

On September 20, 2016, [REDACTED] was interviewed at the CCRB by Investigative Manager Alexander Opoku-Agyemang and Investigator Mac Muir.

On September 4, 2016, [REDACTED] was robbed in [REDACTED] where he resides, by an individual named [REDACTED] who also resided there. [REDACTED] believed that [REDACTED] picked his pockets at approximately 3:00 a.m., and then left the shelter at approximately 4:00 a.m. the morning of September 4, 2016, with [REDACTED] money. [REDACTED] stated that he had 1,800 dollars in 100 dollar bills. At approximately 6:30 p.m. September 4, 2016, [REDACTED] informed DHS officers what had transpired and they told him to call the NYPD.

[REDACTED] called 9-1-1 and explained that he had been robbed. During the interview, [REDACTED] provided multiple versions of the initial timeline before the police arrived. Initially, [REDACTED] said that he called 9-1-1 at 6:00 p.m. and seven additional times before the officers responded at 6:30 p.m. Next, [REDACTED] said he initially called 9-1-1 at 6:26 p.m. and four to five additional times before the officers responded at 8:00 p.m. Finally, [REDACTED] said that he called 9-1-1 at approximately 6:00 p.m. and an additional four to six times in the two hours before officers responded at 8:00 p.m.

On September 4, 2016, at approximately 8:00 p.m., in the vicinity of [REDACTED] in Manhattan, six uniformed officers in three marked RMPs responded to [REDACTED] 9-1-1 calls. [REDACTED] described PO1 as an approximately 5'8" to 6'0" tall dark-skinned Hispanic male in his mid-30's early-40's, with medium length black hair, a medium build, and a "small moustache". [REDACTED] described PO2 as an approximately 5' 6" tall white male in his mid-40's with a medium build. [REDACTED] described PO3 as an approximately 5'10" to 6'1" tall Asian male, with a slim build and medium length hair. [REDACTED] did not interact with PO4, PO5, and PO6, but generally described them as "either two Hispanic males and one black male, or two black males and one Hispanic male." [REDACTED] had never interacted with any of the six officers prior to September 4, 2016.

[REDACTED] was waiting outside on the front stairs outside at [REDACTED] when he was approached by the six officers. The officers never entered the building. [REDACTED] said that there were no individuals within earshot of his conversation with the officers. The responding officers informed [REDACTED] that someone had called and reported that someone had a gun. [REDACTED] denied that he had called in regards to anyone having a gun. [REDACTED] explained to the officers that he had called in regards to being robbed earlier that morning. After listening to [REDACTED] complaint, PO1 told [REDACTED] that he thought his complaint was "bullshit," and further stated, "I'm not making no fucking report. I'm not writing shit." [REDACTED] explained to PO1 that he could not "take the law into his own hands," and therefore needed to file a report regarding the 1,800 dollars stolen from him by [REDACTED]. PO1 informed [REDACTED] that if he "took the law into his own hands" that he would be arrested. The PO1 repeated that he would not take [REDACTED] complaint, and told him to take down his name and badge. [REDACTED] could not recall PO1's name, but described his badge number as being "1277" though he knew that one number was missing. PO1 said that [REDACTED] could call the 33rd Precinct, he still was not going to take [REDACTED] complaint, and "we're not writing a fucking report." PO1 told him that the Department of Homeless Services would handle his complaint. DHS officers had previously told [REDACTED] that they could not handle it and told him to call the NYPD. PO2 and PO3 also told [REDACTED] that "they weren't writing shit," in regards to his complaint. The responding officers left the vicinity of [REDACTED]. The interaction lasted approximately three to five minutes.

[REDACTED] said that there is documentation filed with DHS officers concerning his robbery. [REDACTED] described the two DHS officers as being named "Officer Reese," and "Sergeant Lomax." [REDACTED] believed at one point during his interaction with the six NYPD officers, the DHS officer described as "Sergeant Lomax" spoke with one of the officers.

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Following the incident, [REDACTED] contacted [REDACTED] and the CCRB in order to file his complaint.

Mediation was presented to [REDACTED] at the 36:24 minute mark. [REDACTED] chose to pursue an investigation at the 40:26 minute mark, and rejected mediation because he never wants to see the responding officers again.

PO1: 5'8" to 6'0" tall dark-skinned Hispanic male in his mid-30's early-40's, with medium length black hair, a medium build, and a "small moustache".

PO2: 5' 6" tall white male in his mid-40's with a medium build

PO3: 5'10" to 6'1" tall Asian male, with a slim build and medium length hair

PO4, PO5, PO6: either two Hispanic males and one black male, or two black males and one Hispanic male

Interview Details

Transcript for Interview with Police Officer Steve Tirado

Start 12:24 p.m.

Subject Officer: Police Officer Steve Tirado

- PO Tirado, [REDACTED] years old at the time of the incident, is a 5'10" tall, 200-pound Hispanic male with brown hair and brown eyes.
- PO Tirado worked from 3:00 p.m. to 11:35 p.m. on September 4, 2016. He was assigned to Sector D of the 33rd Precinct with PO Eddy Gutierrez. They were in uniform and assigned to marked vehicle # [REDACTED]. PO Tirado was the recorder.

Memo Book

At 8:23 p.m. PO Tirado responded to a past larceny (a "22") at [REDACTED]. At 8:55 p.m. PO Tirado designated the incident as "90y", with the male complainant described as intoxicated, incoherent, belligerent, and having a psychiatric history.

CCRB Testimony

On September 4, 2016, at approximately 8:23 p.m., PO Tirado and PO Gutierrez responded to [REDACTED] 911 call at the [REDACTED] in Manhattan. PO Tirado stated that the "22" noted in his memo book meant that they were responding to a report of stolen property, but did not recall any other details about the origin of the incident. PO Tirado thought that there were additional officer at the shelter when he and PO Gutierrez arrived, but could not recall who they were or how many were present.

PO Tirado was familiar with the [REDACTED] and stated that it is the source of numerous incidents. PO Tirado had responded to an earlier incident at the shelter that same day, September 4. At 5:41 p.m., there was an EDP at the shelter whose condition resulted in the filing of an AIDED report. This incident was not related to [REDACTED] complaint.

PO Tirado stated that in the recent past, DHS has taken over the policing of the shelter. While 33rd Precinct officers are regularly assigned to the corner of [REDACTED] and they might respond to incidents at the shelter, DHS officers are responsible for handling shelter incidents. If 33rd Precinct officers respond there, it is typical for the DHS officers to tell them that the situation is under control, and for the Precinct officers to "go 98" and resume patrol.

PO Tirado could not recall if he spoke to either DHS staff or [REDACTED] but felt that since he had a memo book entry related to the incident that either he or PO Gutierrez must have spoken to [REDACTED]. PO Tirado did not initially recall [REDACTED] appearance. When shown a photograph of [REDACTED] PO Tirado still did not recognize him. PO Tirado described [REDACTED] as belligerent and incoherent. [REDACTED] smelled strongly of alcohol and was cursing at the officers, though PO Tirado could not recall what he was saying. While PO Tirado had noted in his memo book that [REDACTED] had a psychiatric history, he could not recall how he learned this. PO Tirado noted that all of the residents of the [REDACTED] have a psychiatric history, and that the shelter is associated with a hospital.

[REDACTED] told the officers that someone had stolen a large amount of his money. PO Tirado could not recall further details of [REDACTED] complaint narrative. Due to [REDACTED] incoherence, intoxication, and belligerence, the officers told him that they would not file a report. PO Tirado stated that this was common practice when officers are faced with an intoxicated complainant, and said that it was common to "tactfully and professionally" refuse to take a complaint. PO Tirado denied using profanity during the interaction, or hearing any other officer use profanity.

At some point before or during the incident, PO Tirado learned that [REDACTED] phone number (which was used to report the larceny) was connected to a report of a gun. PO Tirado could not recall when, how, or from whom he learned this, but stated that the alleged "gun run" occurred on the same day as the incident. During the incident with [REDACTED] PO Tirado did not believe that there was a gun involved, as this would have made the incident stick out more in his memory.

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PO Tirado did not question [REDACTED] about a gun or gun report at any point.

End 12:40 p.m.

Interview Details

Transcript for Interview with Police Officer Eddy Gutierrez

Start 12:41 p.m.

Subject Officer: Police Officer Eddy Gutierrez

- PO Gutierrez, [REDACTED] years old at the time of the incident, is a 5'10" tall, 200-pound Hispanic male with brown hair and brown eyes.
- PO Gutierrez worked from 3:00 p.m. to 11:35 p.m. on September 4, 2016. He was assigned to Sector D of the 33rd Precinct with PO Steve Tirado. They were in uniform and assigned to a marked vehicle. PO Gutierrez was the operator.

Memo Book

At 8:23 p.m., PO Gutierrez responded to a past larceny (a "10-22") at [REDACTED]. At 8:55 p.m., PO Gutierrez designated the incident as "90y", with the complainant described as intoxicated, incoherent, and belligerent.

CCRB Testimony

On September 4, 2016, at approximately 8:23 p.m., PO Gutierrez and PO Tirado responded to [REDACTED] 911 call at the [REDACTED] in Manhattan. The officers received an initial radio run describing a "10-22", meaning a theft in the past, and as they were responding an additional call came in from the same caller referring to a man with a gun. When asked if this call led him to believe that a gun was involved, PO Gutierrez answered "Yeah", but followed this affirmation by saying that the shelter is the source of a lot of "bogus" calls.

When the officers arrived at the shelter, there was another marked police car already present. PO Fogarty, of the 33rd Precinct, was on scene, along with a partner who PO Gutierrez could not remember clearly. There were shelter employees inside the building, though PO Gutierrez could not recall if any DHS officers were present. PO Gutierrez did not speak to DHS officers during this incident.

(In general, there are DHS officers assigned to the shelter. DHS has taken over the policing of the shelter, and while Precinct officers might respond to incidents at the shelter, DHS officers are generally responsible for handling shelter incidents. If 33rd Precinct officers respond there, it is typical for the DHS officers to tell them that the situation is under control, and for the Precinct officers to resume patrol.)

Upon entering the shelter, the four officers (PO Gutierrez, PO Tirado, PO Fogarty, and PO Fogarty's partner) were met by [REDACTED]. PO Gutierrez spoke directly to [REDACTED] with the other three officers present. [REDACTED] was apparently intoxicated, as his eyes were bloodshot, his speech was slightly slurred, and there was the smell of alcohol on his breath. PO Gutierrez was aware that each resident of the shelter in question has a psychiatric history.

PO Gutierrez asked [REDACTED] what had happened. [REDACTED] stated that he had been robbed early in the morning. [REDACTED] told PO Gutierrez that he knew the man who had robbed him and how much money was taken, but PO Gutierrez did not remember the alleged robber's name and could only recall that the stolen sum was "in the thousands". [REDACTED] initially stated that he was asleep during the robbery, but when pressed by PO Gutierrez about how he could identify the robber while asleep, [REDACTED] said that he was awake for part of the robbery. PO Gutierrez asked [REDACTED] why he was staying in a homeless shelter if he had thousands of dollars.

Taken as a whole, [REDACTED] initial statements were inconsistent and untrustworthy to PO Gutierrez. PO Gutierrez told [REDACTED] about his doubts, and that the officers weren't going to take a report. This made [REDACTED] more belligerent and agitated, and he told the officers that they were required to take a report. PO Gutierrez pressed [REDACTED] further, asking why [REDACTED] waited so long to report the theft. [REDACTED] initially said the theft occurred early in the morning, and that he didn't want to bother the shelter staff at that hour. PO Gutierrez asked why [REDACTED] didn't contact the police. [REDACTED] replied that he knew the thief would go "downtown", and wanted to look for the thief himself. PO Gutierrez found this statement unconvincing. [REDACTED] stated that he had in fact gone downtown and looked for the thief, and called the

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police after failing to find him. PO Gutierrez asked why [REDACTED] waited multiple hours after failing to find the thief to call the police, to which [REDACTED] had no answer. PO Gutierrez denied threatening to arrest [REDACTED] for looking for the thief himself. At one point during their conversation, [REDACTED] threatened to call a lawyer, and PO Gutierrez told him to “go ahead” and do so. The officers made no report based on [REDACTED] statements, and took no further police action.

PO Gutierrez denied using any profanity during the incident, including referring to [REDACTED] complaint as “bullshit” and telling [REDACTED] that the officers “weren’t writing shit”. PO Gutierrez did not hear any other officer use profanity during the incident.

PO Gutierrez could not remember what PO Fogarty’s partner looked like. PO Gutierrez did not remember any Asian officers being present. There are “a couple” of Asian officers in the 33rd Precinct, but none who were working Tour 3 during the time of the incident.

At the beginning of the interview, PO Gutierrez read his memo book entries into the record. Having done so, PO Gutierrez was asked on what date the entries were made and he stated that they were made on the day of the incident, September 4, 2016. At the end of the interview, PO Gutierrez was shown a copy of his memo book entry which the CCRB had requested over the course of the investigation. This copy of his memo book showed a shorter, less detailed disposition entry than the one PO Gutierrez had read into the record (“90y” vs. “90y, Intox/Incoherent/Belligerent”). When asked to account for the change in his memo book, PO Gutierrez stated that he had added to the entry after the incident had occurred. PO Gutierrez estimated that he had updated his memo book “a couple of days” before the interview, approximately when he received his notification to come to the CCRB.

End 12:57 p.m.

Interview Details

Transcript for Interview with PO Damien Fogarty

Start 10:49 AM

Subject Officer: PO Damien Fogarty

- PO Fogarty, [REDACTED] years old at the time of the incident, is a 5'11" tall, 170-pound white male with brown hair and brown eyes.
- PO Fogarty worked from 4 p.m. to 11:35 p.m. on September 4, 2016. He was assigned to Sector A in the 33rd Precinct with PO Hotoniel Diaz. They were in uniform and assigned to marked vehicle # [REDACTED] PO Fogarty was the operator.

Memo Book

At 8:17 p.m. PO Fogarty responded to a radio run of "10-10" (possible crime, in this case an individual with a gun) at [REDACTED]. PO Fogarty was backing up officers from Sector D. Shortly thereafter, a radio run came through indicating that a person calling from the same phone number as the 10-10 called back to report a 10-22 (past larceny) at [REDACTED].

CCRB Testimony

PO Fogarty was interviewed at the CCRB on October 19, 2016, in regards to CCRB case # 201607657.

On September 4, 2016, at 8:17 p.m., PO Fogarty and PO Diaz responded to a 911 call from [REDACTED] reporting an individual with a gun in the vicinity of [REDACTED] in Manhattan. PO Fogarty had, earlier in the day, been working with PO Kevin Cully, but PO Cully had stayed at the Precinct stationhouse to process an arrest. PO Diaz was assigned to Sector A at that time.

In responding to [REDACTED] call, PO Fogarty and PO Diaz were backing up officers from Sector D. PO Fogarty could not recall what information was provided during the radio run based on [REDACTED] call. He was not sure if any description was given, and he was not given any information about the incident being reported. PO Fogarty could not recall if there were other officers present when he first arrived at [REDACTED]. PO Fogarty drove up and down [REDACTED] between [REDACTED] looking for anyone waving their arms or otherwise trying to signal for the officers' attention. PO Fogarty did not see anyone behaving in this way.

Approximately 10 to 15 minutes later, while the officers were canvassing [REDACTED] a radio run came through indicating that a person calling from the same phone number used to report the individual with a gun called back to report a past larceny at [REDACTED]. PO Fogarty stopped canvassing and drove to [REDACTED]. Upon arriving there, PO Fogarty saw one marked police car, which was assigned to Sector D. PO Fogarty saw PO Eddy Gutierrez and PO Steve Tirado outside of the shelter. Both PO Fogarty and PO Diaz got out of their vehicle and approached the other officers. The four officers met [REDACTED] outside of the shelter.

PO Gutierrez and PO Tirado spoke to [REDACTED] while PO Fogarty and PO Diaz did not. [REDACTED] was initially very belligerent and hostile. PO Fogarty could not recall specific statements that [REDACTED] made, but stated that [REDACTED] was cursing. [REDACTED] told the officers that he had a few thousand dollars taken out of his pocket when he was sleeping, and that he knew who robbed him. PO Gutierrez and PO Tirado found this narrative unconvincing, and questioned [REDACTED] about it. When asked how he could identify the thief if he was asleep during the theft, [REDACTED] corrected himself and said that he was awake during the theft. When asked why he hadn't alerted the shelter staff after being robbed, [REDACTED] told the officers that it was because the theft occurred early in the morning (at approximately 3 a.m.).

PO Fogarty did not find [REDACTED] complaint credible due to both the inconsistent narrative and [REDACTED] belligerent demeanor. PO Fogarty believed that [REDACTED] may have been intoxicated based on [REDACTED] belligerence and the fact that the shelter works with individuals who have a history of psychiatric issues and/or substance abuse.

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When asked by the investigator if [REDACTED] mentioned going to look for the thief, PO Fogarty stated that he believed that [REDACTED] had said so. PO Fogarty did not respond to [REDACTED] statement on this matter, and did not believe that any of the other officers had responded either. No officers told [REDACTED] that he could be arrested for having looked for the thief himself.

During the conversation with [REDACTED] PO Fogarty was not worried that a firearm might be involved. PO Fogarty stopped worrying about a gun once the officers met with [REDACTED] and [REDACTED] described the incident as occurring in the past. [REDACTED] also denied having made the report of a gun. The officers did not question [REDACTED] about this denial, but rather focused on asking him about the robbery.

During the conversation with [REDACTED] PO Gutierrez and PO Tirado exhibited a “professional” demeanor. At no point did either officer raise their voice or use profanity. PO Fogarty specifically denied hearing any officer refer to [REDACTED] complaint as ‘bullshit’ or tell [REDACTED] that they “weren’t writing shit”.

After observing the conversation between [REDACTED] PO Gutierrez, and PO Tirado, PO Fogarty and PO Diaz left to respond to another job. PO Fogarty did not give a final disposition for the incident. Rather, the officers from Sector D gave a final disposition.

End 11:03 AM

Interview Details

Transcript for Interview with PO Kevin Cully

Start 11:06 AM

Subject Officer: PO Kevin Cully

- PO Cully, [REDACTED] years old at the time of the incident, is a 6'3" tall, 185-pound white male with brown hair and brown eyes.
- PO Cully worked from 4 p.m. to 11:35 p.m. on September 4, 2016. He was assigned to Sector A in the 33rd Precinct with PO Damien Fogarty. They were in uniform and assigned to marked vehicle # [REDACTED] PO Cully was the recorder.

Memo Book

CCRB Testimony

PO Cully was interviewed at the CCRB on October 19, 2016, in regards to CCRB case # 201607657.

On September 4, 2016, PO Cully started his tour patrolling Sector A of the 33rd Precinct with PO Fogarty. However, at 5:52 p.m., PO Cully arrested two individuals for petit larceny. PO Cully returned to the Precinct stationhouse to process these arrests, and remained there until the end of his tour at 1:45 a.m. on September 5, 2016. As a result, PO Cully was not present for the incident under investigation. PO Cully stated that PO Fogarty returned to patrol after PO Cully began processing the arrests, but did not know which officer was reassigned as PO Fogarty's new partner.

End 11:11 AM

Interview Details

Transcript for Interview with Police Officer Hotoniel Diaz

Start 11:37 a.m.

Subject Officer: PO Hotoniel Diaz

- PO Diaz, [REDACTED] years old at the time of the incident, is a 5'6" tall, 170-pound Hispanic male with black hair and hazel eyes.
- PO Diaz worked from 3:00 p.m. to 11:35 p.m. on September 4, 2016. He was assigned to Sector A in the 33rd Precinct with PO Damian Fogarty. They were in uniform and assigned to marked vehicle # [REDACTED] PO Diaz was the recorder.

Memo Book

At 8:17 p.m. PO Diaz responded to a "10-10" (report of a firearm) in the vicinity of [REDACTED]. At 8:41 p.m., PO Diaz noted that officers from Sector D of the 33rd Precinct would make a final disposition regarding this incident.

CCRB Testimony

At approximately 8:17 p.m. on September 4, 2016, PO Diaz responded to a report of a firearm in the vicinity of [REDACTED] in Manhattan. PO Diaz, along with his partner PO Damian Fogarty, were providing backup on this incident to the officers assigned to Sector D, PO Eddy Gutierrez and PO Steve Tirado. PO Diaz had previously been working at the Precinct stationhouse, but was assigned to Sector A with PO Fogarty after PO Fogarty's partner (identified by the investigation as PO Kevin Cully) became occupied processing an arrest. PO Diaz could not recall what information was provided during the initial "10-10" radio run, or whether a description was provided.

Upon arriving at [REDACTED], PO Diaz and PO Fogarty got out of their vehicle to canvass for signs of a firearm. The officers did not see anything indicative of a firearm incident, and did not speak to any civilians at this point. PO Diaz indicated that a central dispatch operator had called back a phone number used to report the firearm, and received no response. PO Diaz clarified that he was not sure if a single phone number had been used to make multiple 911 calls, or what exactly the central dispatch operator had said. However, based on this lack of response to the operator's call, along with the frequency of false firearm reports at the intersection in question, PO Diaz felt that there was no firearm present.

PO Diaz and PO Fogarty got back into their vehicle. The Sector D officers indicated that they were going to the men's shelter at [REDACTED] so PO Diaz and PO Fogarty followed suit. At the shelter, PO Diaz and PO Fogarty met PO Gutierrez and PO Tirado. The four officers met a group of DHS officers just inside the shelter. PO Diaz could not remember how many DHS officers were present or what they looked like, but estimated that there were roughly four DHS officers present. These officers were wearing uniforms that were very similar to those of NYPD officers, including similar shields and patches, but did not carry firearms. PO Gutierrez spoke to the DHS officers, while PO Diaz did not. The DHS officers indicated that the situation was under control, and the four NYPD officers went outside of the shelter.

Out in front of the shelter, the NYPD officers met [REDACTED] PO Diaz thought that [REDACTED] looked "mad", but could not explain why. PO Gutierrez spoke to [REDACTED] PO Diaz could not remember other officers speaking to [REDACTED] PO Diaz did not observe all of PO Gutierrez's conversation with [REDACTED] PO Diaz asked PO Gutierrez if the situation was under control, PO Gutierrez answered that it was, and PO Diaz and PO Fogarty left to respond to other incidents. PO Diaz was present with PO Gutierrez and [REDACTED] for approximately two or three minutes. PO Diaz never learned what [REDACTED] complaint was about, through any means. When PO Diaz was informed by the investigator that [REDACTED] [REDACTED] had reported that he had been robbed of a large sum of money, PO Diaz stated that he did not hear any discussion of such an incident.

PO Diaz denied using any profanity towards [REDACTED] or hearing any other officer using profanity. PO Diaz specifically denied any officer saying that [REDACTED] complaint was "bullshit" or that the officers were not going to "write shit". PO

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Diaz denied hearing [REDACTED] discuss having taking action against his alleged robber, and denied threatening to arrest [REDACTED] PO Diaz did not remember any officers asking [REDACTED] about the firearm report. After leaving the incident location, PO Diaz and PO Fogarty responded to a different incident in the vicinity of [REDACTED]
[REDACTED]

End 11:49 a.m.